

**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
AMARILLO DIVISION**

Shirley G. Newman, an individual,	§	CASE NO. 2:09:CV-00188
	§	
Plaintiff,	§	
	§	
vs.	§	REPRESENTATIVE ACTION
	§	
Susan J. Clay individually and d/b/a	§	
Dalhart Publishing Co., a/k/a	§	
The Dalhart Texan,	§	
	§	
Defendant.	§	JURY TRIAL DEMANDED

PLAINTIFF'S ORIGINAL COMPLAINT

INTRODUCTION

1. This is a representative action for unpaid wages and overtime brought pursuant to the Fair Labor Standards Act, (the "FLSA") 29 U.S.C. § 216(b).

JURISDICTION

2. This Court has jurisdiction over this action pursuant to 29 U.S.C. § 201, et seq, 28 U.S.C. § 1331 and 1337, diversity jurisdiction and the doctrine of pendant jurisdiction.

PARTIES

3. Shirley G. Newman (the "Plaintiff") is a resident of Dalhart, Dallam County, Texas, and at times material worked for Susan J. Clay, an individual doing business as Dalhart Publishing Co., which is also known as The Dalhart Texan, at its facility in Dalhart, Dallam County, Texas. Plaintiff brings this action on behalf of herself and as representative of similarly situated workers who file consents to join in this action. The acts, practices and events

complained of occurred, at least in substantial part, in the Northern District of Texas, Amarillo Division.

4. Defendant Susan J. Clay ("Clay") individually and d/b/a Dalhart Publishing Co., a/k/a The Dalhart Texan, is the owner of and is doing business as Dalhart Publishing Co., which is also known as The Dalhart Texan ("The Dalhart Texan"), and she may be served by serving her at 410 Denrock Avenue, Dalhart, Texas 79022-2628. The Dalhart Texan maintains its principal place of business in Dalhart, Texas and is engaged in the publishing, newspaper and on-line newspaper business. Clay is personally liable for the acts of The Dalhart Texan because she controls said d/b/a and makes the day to day decisions about employee payroll matters and rates of pay.

FACTS

5. Plaintiff was employed by Clay at The Dalhart Texan facility in Dalhart, Texas from July 21, 2007 until April 5, 2009. Clay is the individual who controls The Dalhart Texan, and who controls the day to day operations and make decisions about payroll matters and rates of pay concerning the employees of The Dalhart Texan.

6. Clay, as well as her agents, employees and representatives combined, conspired and acted through a concert of action to avoid paying overtime to its hourly employees. It is believed Clay as well as others, including but not limited to the other non-exempt hourly workers, in the course of their employment with Clay and during existence of this continuing conspiracy, participated in the combination, concert of action and conspiracy, whichever, hereinafter alleged and are co-conspirators.

7. During the time of Plaintiff's employment Clay failed to pay Plaintiff and others similarly situated, their lawful overtime wages for hours of work they performed in excess of 40 hours per week as required by the FLSA.

8. The failure to pay Plaintiff and others similarly situated their lawful overtime wages under the FLSA included paying all overtime hours at the regular rate, and was paid as regular time, not time and a half as required by the FLSA. Plaintiff regularly worked up to and over fifty (50) hours per week, and any such hours worked over forty (40) hours a week were paid as regular time and not time and a half. Other of Clay's similarly situated employees were paid in the same manner and Clay repeatedly made statements to her employees that she did not pay overtime.

9. Similarly situated individuals working in the production of goods or services for commerce at Clay's facility in Dalhart, Texas, were deprived of their lawful overtime wages under the FLSA in the same manner as Plaintiff. This action is brought on behalf of those similarly situated workers.

10. Clay's failure to pay Plaintiff and similarly situated workers their lawful wages required by the FLSA was willful. Despite her knowledge that time spent performing their daily activities for the benefit of The Dalhart Texan and Clay, particularly those hours spent working over forty (40) hours per week, constituted work and is compensable time, Clay failed and refused to pay the proper overtime rate. The foregoing activities performed by the workers are compensable time under the FLSA at the overtime rate. Clay took no steps to compensate workers at The Dalhart Texan in the State of Texas for this time, in violation of the law.

REPRESENTATIVE ACTION

11. Plaintiff brings this action on behalf of herself and all similarly situated employees of The Dalhart Texan, which is wholly owned and controlled by Clay. Plaintiff requests that notice be issued to those employees informing them of their right to file consents to join in this action.

CAUSES OF ACTION

**COUNT I
FLSA**

12. Plaintiff, for her Count I of this Complaint, inclusive of the foregoing, alleges and states that Plaintiff and similarly situated workers are entitled to relief pursuant to 29 U.S.C. § 216(b) of the Fair Labor Standards Act for damages, unpaid wages, reasonable attorneys fees and costs.

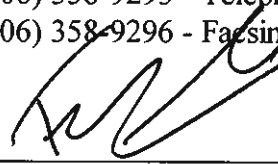
PRAYER FOR RELIEF

Wherefore, Plaintiff prays that this Court:

- a. Issue notice to all similarly situated employees of The Dalhart Texan informing them of their right to file consents to join in this action;
- b. Declare that Plaintiff and similarly situated workers who file consents to join this suit are entitled to pay for all of their FLSA-defined hours of work, including all hours worked over 40 hours in one week;
- c. Awarding Plaintiff and similarly situated workers who file consents to join in this suit, their unpaid overtime and proper rate of overtime pay under the FLSA for all hours of work in excess of 40 hours per week, an equal amount of liquidated damages, attorneys fees and costs of suit; and
- d. Such other damages and further relief as the Court deems just and proper.

Respectfully submitted,

LAW OFFICES OF PHILIP R. RUSS
2700 S. Western, Suite 1200
Amarillo, Texas 79109
(806) 358-9293 - Telephone
(806) 358-9296 - Facsimile

A handwritten signature in black ink, appearing to be 'F. Zavala', written over a horizontal line.

Felipe Zavala, Bar No. 24013796

JURY DEMAND

Plaintiff herewith demands a trial by jury.

JS 44 (Rev. 12/07)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

Newman, Shirley G.

(b) County of Residence of First Listed Plaintiff Dallam
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number)

Felipe Zavala, Philip R. Russ, Law Offices of Philip R. Russ, 2700
S. Western, Suite 1200, Amarillo, TX 79109 (806) 358-9293

DEFENDANTS

Clay, Susan J. individually and d/b/a Dalhart Publishing co.,
a/k/a The Dalhart Texan

County of Residence of First Listed Defendant
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE
LAND INVOLVED

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
☐ 2 U.S. Government Defendant
☒ 3 Federal Question (U.S. Government Not a Party)
☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | PTF | DEF | | PTF | DEF |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other LABOR <input checked="" type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 463 Habeas Corpus - Alien Detainee <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights	PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition		

V. ORIGIN

(Place an "X" in One Box Only)

- ☒ 1 Original Proceeding
☐ 2 Removed from State Court
☐ 3 Remanded from Appellate Court
☐ 4 Reinstated or Reopened
☐ 5 Transferred from another district (specify)
☐ 6 Multidistrict Litigation
☐ 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
29 U.S.C., Sec. 201, et seq.

Brief description of cause:
Failure to pay applicable overtime rate

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23
DEMAND \$
50,000.00

CHECK YES only if demanded in complaint:
JURY DEMAND: ☒ Yes ☐ No

VIII. RELATED CASE(S) IF ANY

(See instructions):


JUDGE

DOCKET NUMBER

DATE

08/07/2009

SIGNATURE OF ATTORNEY OF RECORD



FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____